IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) SPL. APPL. WRIT No. 1167 of 1999

MS.VANDANA BHODORIA
V/S
STATE & ORS

(2) SPL. APPL. WRIT No. 1175 of 1999

JITENDRA KUMAR SHARMA & ORS
V/S
STATE & ORS

Mr. M MRIDUL assisted by Mr.ASHOK CHOUDHARY, for the appellant / petitioner

Mr. OP BOOB, A.G.A., for the respondent

Date of Order : 7.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

These two appeals had been filed against the common judgment of the learned Single Judge deciding three writ petitions.

The appellants had filed writ petitions praying for quashing the advertisement dated 25.2.99, and for directing the respondents to fill up all the vacancies advertised vide advertisement No.1/96. The learned Single Judge found that the order dated 30.6.98, sanctioning some more posts, was made by the government, while advertisement dated 25.2.99 was issued by the District Establishment

Committee, the appointments were offered, and instead of 220 posts advertised vide advertisement No.1/96, 232 persons had been appointed, and they have joined. Thus, no fault can be found with the respondent in not filling up the newly sanctioned posts by filling them in pursuance of advertisement No.1/96. It has also been found that it is not the petitioners' case that anybody below in merit than the petitioners had been offered appointment, and it has also been found that the names of the petitioners appeared much below in the merit, and selection process stood concluded strictly in accordance with law. The petitioners thus have no right to raise any grievance whatsoever.

The skeleton facts necessary for appreciating the controversy are, that advertisement No.1/96 was issued advertising 220 vacancies, and mentioning that the posts are likely to be increased or decreased, pursuant to this advertisement selection exercise was undertaken, and a merit list was prepared. It appears that the process took a bit longer time, and in the meantime some more posts appeared to have come to be sanctioned, and to fill those posts, advertisement dated 25.2.99 was issued.

During course of arguments, it is informed by learned counsel for the appellant, that a total merit list of some 330 candidates was prepared, and vacancies were required to be filled, as existed on the date of

preparation of the select list. For this purpose, learned counsel referred to the provisions of Rule 274 of the Rajasthan Panchayati Raj Rules, 1996. On this basis, it is contended that since at the time of preparation of the merit list, more than 300 vacancies existed, the merit list prepared could relate to those very vacancies only, and therefore, a reserve list to the extent of 50% was further required to be prepared, which having not been prepared, a direction is required to be issued for preparation of the reserve list, from out of the candidates, who had appeared in response to the advertisement No.1/96, and then to make appointment from out of them.

The other argument made is, that since the candidates from out of this select list did not join, for filling in those posts, a fresh merit list was required to be prepared from out of the candidates, who had offered their candidature in response to the advertisement No.1/96, as the merit list as prepared did not show any marks obtained by the candidates, so as to vary the cut off marks.

We have considered the submissions. At the outset, it may be observed that admittedly neither of the petitioners figure in the merit list as prepared.

So far reliance on Rule 274 is concerned, that is

wholly misplaced, for the simple reason, that these rules came into force as late as on 30th December 1996 only, while the advertisement No.1/96 had been issued much earlier, as the applications were required to be submitted upto 29.2.96. In that view of the matter, the matter was and is required to be considered on the anvil of the provisions as were existed earlier. If considered from that standpoint, it is clear that 220 vacancies were advertised, and therefore, a merit list of 220 candidates was required to be prepared, and a reserve list upto the extent of 50% was required to be prepared. Thus, a list of in all 330 candidates was required to be prepared in order of merit, irrespective of the nomenclature of the list. We may refer to the judgment of Hon'ble the Supreme Court in Madan Lal & Ors. Vs. State of J&K & Ors., reported in (1995)3 SCC 486, wherein a merit list of candidates beyond the number of vacancies advertised was prepared, inasmuch as, against 11 vacancies a merit list of 20 candidates was prepared, and Hon'ble the Supreme Court held that the remaining 9 candidates in order of merit, should be deemed to be wait listed candidates. In that view of the matter, the merit list said to have been prepared of 330 candidates, by itself, amounts to a merit list of 220 candidates, and reserve list or wait list of another 110 candidates. That being the position, since the petitioners do not figure anywhere in the said list, they cannot claim any right to be appointed, more so when as found by the learned Single

Judge that as against 220 advertised posts, 232 persons had been appointed, and all of them have joined. Thus, the merit list had already been operated to its full extent, and therefore, even the reserve list is not required to be operated any further, much less then the petitioners can be said to be entitled to ask this Court to direct the respondents to now prepare a fresh reserve list, from out of the candidates, who had offered their candidature in response to the advertisement No.1/96.

That apart, learned counsel for the appellant could not point out any legal authority for the proposition, that after a select list is prepared, and appointments have been made, any direction can be claimed to direct the selecting body to again prepare a further reserve list, by finding the merit of the candidates, who had offered the candidature in response to the advertisement.

Thus, taken from any standpoint, we do not find any ground of interference with the order of the learned Single Judge.

The appeals thus, have no force and are dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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